In the Supreme Court

OF THE

United States

OCTOBER TERM, 1961

No. 5[illegible]

JOHN J. ROGERS, et al.,

Petitioners,

vs.

ALASKA STEAMSHIP COMPANY, et al.,

Respondents.

JOHN J. ROGERS,

Petitioner,

vs.

AMERICAN PRESIDENT LINES,

Respondent.

CONSOLIDATED PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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PERSAL-WALSH PRINT NO. [illegible] SAN FRANCISCO

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in *Rogers v.*

Alaska Steamship Company (docketed below as No. 16,862) on January 27, 1961, and the judgment of the said Court in *Rogers v. American President Lines* (docketed below as No. 17,110) dated June 5, 1961. On June 20, 1961, Associate Justice Douglas signed an order extending time to file petition for writ of certiorari to September 1, 1961, to allow consolidated petitions.

CITATIONS TO OPINIONS BELOW

The order of the District Court immediately involved in No. 16,862 is printed in Appendix B at pp. 32-35. The order of the District Court involved in No. 17,110 is printed in Appendix B at pp. 35a-35c.

The opinion of the Court of Appeals in No. 16,862 is reported at 290 F.2d 116; rehearing denied, 290 F.2d 124. It is printed in Appendix B at pp. 4-24.

The opinion of the Court of Appeals in No. 17,110 is not yet reported; it is printed in Appendix B at pp. 25-31.

The original order of the District Court (R. 76-78), which is ultimately involved, is printed in Appendix C at pp. 65-67; the opinion of the Court of Appeals in the appeal from that order is reported at 249 F.2d 646, and is printed in Appendix C at pp. 68-78.

The Consent Decree of the Court of Appeals for the Ninth Circuit in *NLRB v. Pacific American Shipowners Association, et al.,* No. 13,386, entered on June 19, 1952, and which has a fundamental relationship

to the underlying controversy, is unreported; it is printed in Appendix C at pp. 36-64.

JURISDICTION

The judgment of the Court of Appeals in case docketed No. 16,862 was entered on January 27, 1961. (App. B, pp. 4-21.) Rehearing was denied on April 4, 1961. (App. B, pp. 22-24.) The judgment of the Court of Appeals in case docketed No. 17,110 was entered on June 5, 1961. (R. III, p. 55.)* (App. B, pp. 25-31.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether class actions lie in admiralty.

2. Whether representative suits for seamen's wages may be joined, when predicated on the same questions of fact and law, though involving different voyages.

3. Whether a libel for wages in admiralty may be dismissed with prejudice for mere misconstruction of an ambiguous order to replead without violating due process of law.

4. Whether wage claims by seamen can be stated in the form of the common counts, in the presence of statutory shipping articles and releases.

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*References to transcript of record in the appeal in case docket No. 17,110 are hereinafter preceded by "R. III".

RULES AND CONSTITUTIONAL PROVISION INVOLVED

The rules involved are Admiralty Rules 22 and 44 of this Court, Rule 23(a) of the Federal Rules of Civil Procedure, and Local Admiralty Rule 7 of the United States District Court for the Northern District of California. The Constitutional provision involved is the Fifth Amendment to the United States Constitution. They are printed in the order mentioned in Appendix A at pp. 1-3.

STATEMENT

> ". . . [Y]ou will be inclined to think that the client's rights are made to depend too much on mere questions of procedure, . . . and I regret to say that there have been few periods . . . when there was not much justification for the criticism. . . ."
>
> Harlan F. Stone, Law and Its Administration 108 (1924).

INTRODUCTION

None of the rulings involved here go to the merits of the controversy. Yet, their practical effect will be to deprive some 650 seamen of a hearing of their claims for back wages. The District Court ruled as it did on the ground that it lacked power to adopt the procedural solutions suggested by petitioners. Thus, what is presented are refusals to exercise discretion rather than abuses of discretion. In the opinion of

petitioners, this case at best is an extreme example of procedural conservatism in the face of novel circumstances; at worst it could be characterized as a demonstration of an unsympathetic, if not hostile, judicial attitude towards what may have been conceived to be unreasonable demands by seamen for back wages which could well involve aggregate amounts running into seven figures. In any event, the wage claims of all but one petitioner were, ultimately, dismissed by District Court Judge Goodman for misconstruing an ambiguous order of then District Court Judge Hamlin in regard to joinder of parties and claims, but in a manner which, in the interim, District Court Judge Harris had indicated to be satisfactory.[1] The remaining petitioner's claims were subsequently dismissed by District Court Judge Weilenberg on the ground that Admiralty Rule 22 of this Court precludes the use of the common counts in admiralty when shipping articles and releases are executed. An appeal from that order has resulted in a recent (June 5, 1961) affirmance by the Court below, in docket No. 17,110 of that Court.

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[1]The District Court below uses the master calendar system, which can, as in this case, cause problems. Petitioners sought to have the case assigned to a single judge as recommended in the *Handbook of Recommended Procedure for the Trial of Protracted Cases*, 25 F.R.D. 351, 377 (the general practice of the District Court below is noted at 379), but this motion was denied by Judge Goodman. In all, four district judges played a significant role in this case; as indicated, their rulings were not entirely harmonious.